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IN THE

Supreme Court of the United States

October Term, 1963

No. 463

LYDON WEBBER, JOHN MARTINSON, JOHN P. MURPHY, JOSEPH O'DONNELL, JULIO F. PACHECO, J. DAMSTEDT, JOSEPH NESSMAR, K. VLACHOS, ROBERT C. MISCIONE, SOREN LASSEN, EDWARD MARSH, RICHARD THOMPSON, GRADY WATSON, GERALD E. PETTIPAS, MARVIN PHILLIPS, JOHN BOLING, ZYGMUNT W. OSINSKI, RUSSELL H. BRANDON, MAX HARRISON, JAMES HAYES, AL KERR, ROBERT MATTHEWS, and LINDSEY J. WILLIAMS, as Trustees of the Seafarers Welfare Plan; and RUSSELL H. BRANDON, MAX HARRISON, JAMES HAYES, AL KERR, E. B. McAULEY and AL TANNER, as Trustees of the Seafarers Vacation Plan; JOSEPH P. GLYNN, ANDREW MacDONALD, KENNETH J. WRIGHT, RALPH E. CASEY, WILLIAM G. MULLINS, JOSEPH S. KISS, W. H. MILLS, C. J. BRACCO and JAMES TIERNEY, as Trustees of the Radio Officers Union Pension and Welfare Plan; JOSEPH P. GLYNN, ANDREW MacDONALD, WILLIAM G. MULLINS, JOSEPH S. KISS and W. H. MILLS, as Trustees of the Radio Officers Union Vacation Plan; ROBERT C. FRAVEL, AHMED MEHSSIN; and MAX HARRISON and PRICE C. SPIVEY, as Trustees of the Maritime Advancement Programs,

Petitioners,

against

TURNER & BLANCHARD, INC.,

Respondents;

and

S.S. EMILIA and A. H. BULL STEAMSHIP CO.

PETITIONERS' REPLY

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HOWARD SCHULMAN,
of Counsel.

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PETITIONERS' REPLY

Reply Arguments

1. The cargo owners in their brief state that almost all of the seamen wage lienors have been paid their wages. This is not so. It is conceded that there are seamen wage lienors

as well as maintenance and cure lienors who have not been paid and are entitled to preferred maritime liens.

(a) It is respectfully submitted that such argument, made by the cargo owners, is merely used to cloud and divert the real issue in this case. One of the major issues of law before this Court is whether the long-established law, concerning the priority of maritime liens and how they should be paid, should be changed. It does not matter whether one or numerous seamen wage lienors remain unpaid.

(b) The next question of law concerns the application of the rule enunciated by this Court in the *Poznan* case. The *Poznan* case held that expenditures which inured to the benefit of lienors of an attached vessel, which helps create or preserve the fund available for distribution, should be treated as an expense of administration and charged against the proceeds of the sale of the vessel before satisfaction of payment of all other liens. The question of law present is whether the *Poznan* rule can be applied to destroy long-established rights of seamen. The record below clearly shows that the acts do not preserve or create a fund as required by the *Poznan* case, but in fact destroys or depletes it, which is contrary to the *Poznan* doctrine and rationale. The *Poznan* case seeks to prevent unjust enrichment while the decision below does just the opposite.

2. Petitioners did not engage in any delay as claimed by the cargo owners, in not seeking a stay of the order discharging the cargo. The propriety of the discharge of the cargo has never been an issue. The sole issue is who should bear the cost thereof, the seamen or the cargo owners. Contrary to the opposition's contention, the record conclusively demonstrates that petitioners moved expeditiously and timely to prevent the distribution of any funds to cover the cost of the cargo's discharge.

3. Petitioner Maritime Food Corporation joins in support of this reply.

CONCLUSION

For the reasons set forth herein and in the petition for a writ of certiorari, the relief requested herein should be granted.

Respectfully submitted,

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Dated: October 10, 1963.